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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,545	10/20/2003	Roman D. Halko	949797-100025US	9321

34026 7590 11/22/2005

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EXAMINER	
GRAHAM, MARK S	

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/689,545	HALKO ET AL.	
	Examiner	Art Unit	
	Mark S. Graham	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 10-12* is/are rejected.

7)☒ Claim(s) *7-9 and 13-16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by McKinnon et al. (McKinnon). McKinnon's resin prior to be injected into the mold inherently would have to be heated thus meeting the limitations of curing the "blade pre-form around the interposed lower region of the hockey stick shaft with the application of heat." It is noted that applicant has not contested this rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conroy in view of Hsu. Conroy discloses the claimed device with the exception of the elastomer layer between the composite constructs. However, as disclosed by Hsu it is known in the sporting good art to provide such a layer for shock absorption. It would have been obvious to one of ordinary skill in the art to have provided such a layer between Conroy's composite layers as well in order to absorb shock.

Regarding claims 4, 5, 10, and 11, absent a showing of unexpected results, the exact degree of elongation and thickness of the elastomer layer would obviously have been up to the ordinarily skilled artisan depending on the degree of cushion and flexibility desired in the handle.

In response to applicant's argument that Hsu is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both baseball and hockey involve a player swinging a wood or composite stick to hit a hard object. In both cases regardless of the particular intricacies of each swing shock and vibration are going to result in the handle from the contact when the implement is swung. Therefore one of ordinary skill in the art seeking to ameliorate the effects of shock and vibration would naturally have considered the solutions found in either bats or hockey sticks.

Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 2 respectively above, and further in view of Vaughan. Claims 6 and 12 are obviated for the reasons set forth in the rejections of claims 1 and 2 with the exception of using the elastomer layer on less than the entire periphery. However, as disclosed by Vaughan it is known in the art to use such on less than the entire periphery. It would have been obvious to one of ordinary skill in the art to have done the same with the Conroy/Hsu stick if such was determined to provide enough flexiblity/cushion in the stick.

Claims 7-9 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

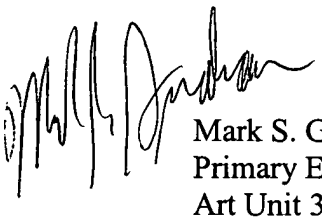
Applicant's arguments filed 9/7/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
11/17/05



Mark S. Graham
Primary Examiner
Art Unit 3711